



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 13-16
January 7, 2013
Enforcement Advisory No. 2013-01

FCC ENFORCEMENT ADVISORY

HEARING AID COMPATIBILITY FOR WIRELESS TELEPHONES

WIRELESS SERVICE PROVIDERS ADVISED TO REVIEW COMPLIANCE WITH HEARING AID COMPATIBILITY RULES AND ENSURE ACCURATE REPORTING

Annual Compliance Filing for Service Providers Due January 15, 2013

The Enforcement Bureau reminds wireless service providers, including resellers, of their obligation to report on compliance with the hearing aid compatibility rules on or before January 15, 2013.¹ The hearing aid compatibility rules ensure that individuals with hearing loss can fully access advanced wireless phone services without excessive feedback or noise.

QUICK GUIDE

- Wireless service providers must file required Hearing Aid Compatibility Status Reports by January 15, 2013.
- The Bureau has observed that hearing aid compatibility status reports filed by service providers (and manufacturers) often contain numerous errors. Given the upcoming reporting deadline, we urge service providers to exercise due diligence in making the representations required by the hearing aid compatibility rules. The failure to do so undermines the ability of consumers to access reliable information on the availability of hearing aid-compatible handsets and confuses other market participants.
- We emphasize (i) that a company's failure to familiarize itself with the relevant law does not excuse noncompliance; and (ii) that there is no *de minimis* exception to the wireless hearing aid compatibility reporting requirement.
- Service providers that have already filed their hearing aid compatibility status reports for 2013 should review such filings for accuracy and completeness and timely amend their filings as necessary to correct any errors.

As part of the Commission's longstanding commitment to ensuring that people who use hearing aids and cochlear implants have continuing access to advanced technologies as they develop, the Bureau will continue to take action against companies that violate the hearing aid compatibility rules. Last year, the Enforcement Bureau

¹ The filing deadline for these reports is January 15th each year. When the 15th of the month falls on a weekend or holiday, the report is due on the next business day. See Hearing Aid Compatibility Status Reporting at <http://wireless.fcc.gov/hac>.

proposed nearly \$1.4 million in monetary penalties for violations of the hearing aid-compatible handset deployment requirements and negotiated consent decrees with voluntary contributions totaling more than \$725,000. As we have previously noted, the Bureau's heightened enforcement posture recognizes that the hearing aid compatibility rules have been in place (in one form or another) for almost a decade and that service providers should now have implemented robust programs to ensure compliance with these important rules.

What do the hearing aid compatibility rules require? FCC rules require most wireless service providers to offer a minimum number of hearing aid-compatible handsets, making their products accessible to consumers with hearing loss.² To ensure that consumers have access to up-to-date information on the availability of those handsets and that the Commission can monitor compliance, FCC rules also require service providers to make periodic status reports and to post specific information on their public websites. The status reports and web content provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets.

We again remind service providers (i) that a company's failure to familiarize itself with the relevant law does not excuse noncompliance; and (ii) that there is no *de minimis* exception to the wireless hearing aid compatibility reporting requirement.³

How important is accurate reporting? Inaccurate reports hamper the Commission's ability to monitor the deployment of hearing aid-compatible handsets and impede compliance with the hearing aid compatibility rules themselves. Service providers (and manufacturers) are obligated to *accurately* report their handset offerings in their annual hearing aid compatibility status reports.⁴

We note that in some instances service providers have mistakenly reported only those hearing aid-compatible handsets that were "sold" to consumers during the reporting period instead of all compatible handsets "offered," as contemplated by the rules.⁵ The Bureau also has found inaccuracies in the relevant hearing aid compatibility handset rating, model name, and FCC ID, as well as the time period during which such handsets were offered. Errors in manufacturer or service provider reports may then be replicated by other entities, creating a daisy chain of non-compliance. The FCC's Equipment Authorization System is the most reliable source for information on a handset's hearing aid compatibility rating,⁶ and the Enforcement Bureau urges all filers to review their hearing aid compatibility service reports carefully before submission to ensure their accuracy. Service providers that have already filed their hearing aid compatibility status report for 2013 should review their filings for accuracy and completeness and timely amend their filings as necessary to correct any errors. We will consider taking additional enforcement actions in this area if this problem persists.

² The full text of the wireless hearing aid compatibility rules is set forth at 47 C.F.R. § 20.19. Among other things, these rules include technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes, and establish deadlines by which wireless service providers, including resellers and Mobile Virtual Network Operators, are required to offer specified numbers or percentages of handsets per air interface that comply with the relevant standard.

³ Service providers offering two or fewer digital wireless handset models per air interface may qualify for the *de minimis* exception (47 C.F.R. § 20.19(e)). Although these entities are exempt from most of the hearing aid compatibility deployment requirements in 47 C.F.R. § 20.19, they must still comply with the reporting requirement in 47 C.F.R. § 20.19(i). Effective September 10, 2012, the *de minimis* exception is unavailable to service providers that do not meet the definition of a "small entity" beginning two years after their initial offerings. See *id.* § 20.19(e)(1)(ii); see also *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, 11180–89, paras. 35–59 (2010).

⁴ See 47 C.F.R. § 20.19(i).

⁵ See *id.* § 20.19(i)(3)(i) ("Reports filed by service providers must include: (i) [c]ompliant handset models offered to customers since the most recent report . . .").

⁶ The Equipment Authorization System is an electronic database of all equipment certified under FCC authority. The database identifies the hearing aid compatibility rating of each handset by FCC ID, as reported by the handset manufacturer in test reports submitted to the Commission at the time of an equipment authorization or of any modification to such authorization. See <http://transition.fcc.gov/oet/ea/fccid/>.

What happens if manufacturers or service providers do not comply with the rules? Manufacturers and service providers should promptly review their compliance with the hearing aid compatibility rules, as we intend to strictly enforce them.

- Failure to comply with the digital wireless handset deployment requirements may result in monetary forfeitures starting at \$15,000 per violation. In 2012, the Commission revised its approach to the assessment of base forfeitures for violations of the hearing aid-compatible handset deployment requirements in order to more fully reflect the significance of these violations and to better deter future noncompliance. Specifically, the Commission began applying the \$15,000 base forfeiture to *each* failure to offer a hearing aid-compatible handset during *each* month of the reporting year.⁷
- Failure to comply with the reporting and web site posting requirements may result in monetary forfeitures starting at \$6,000 per violation.

In addition, these base forfeiture amounts are subject to adjustment based on aggravating or mitigating factors. The Communications Act and Commission rules authorize forfeitures against a common carrier of up to \$150,000 for each violation, or for each day of a continuing violation, up to a maximum of \$1,500,000 for a single act or failure to act.⁸

Need more information? To file a hearing aid compatibility status report, visit <http://wireless.fcc.gov/hac>. For additional information regarding compliance with and enforcement of the wireless hearing aid compatibility rules, please contact John D. Poutasse, (202) 418-2172, John.Poutasse@FCC.gov, or Pamela Hairston, (202) 418-1165, Pamela.Hairston@fcc.gov of the Enforcement Bureau. For general information on the wireless hearing aid compatibility rules, contact Michael Rowan, (202) 418-1883, Michael.Rowan@fcc.gov, or Eli Johnson, (202) 418-1395, Eli.Johnson@fcc.gov of the Wireless Telecommunications Bureau.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), (202) 418-0432 (TTY). You may also contact the Enforcement Bureau on its TTY line at (202) 418-1148 for further information about this Enforcement Advisory, or the FCC on its TTY line at 1-888-Tell-FCC (1-888-835-5322) for further information about the wireless hearing aid compatibility rules.

Media inquiries should be directed to Mark Wigfield, (202) 418-0253, Mark.Wigfield@fcc.gov.

Issued by: Chief, Enforcement Bureau

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⁷ See *T-Mobile USA, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4405, 4415, paras. 22-23 (2012).

⁸ See 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(3).